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No. 83-1051

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

BABCOCK MEMORIAL PRESBYTERIAN CHURCH, A BODY CORPORATE, ET AL.,

Petitioners,

v.

THE PRESBYTERY OF BALTIMORE OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, ET AL.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the Court of Appeals of Maryland violate the First and fourteenth Amendments to the Constitution of the United States?

2. Should the Petition for Writ of Certiorari be denied for want of a substantial federal question?

3. Is there a conflict among states as to the meaning of *Jones v. Wolf*?

4. Is this case of sufficient national importance to warrant review by this Court?

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STATUTES INVOLVED

Annotated Code of Maryland, Corporations and Associations Article — §§ 5-329 to 5-332. See Appendix F.

STATEMENT OF THE CASE

Petitioner's Statement of the Case omits certain crucial facts. The series of events which triggered this court

action began with a meeting of the Babcock congregation on September 14, 1980, called to discuss the question of terminating its relationship with The Presbytery of Baltimore of the United Presbyterian Church in the United States of America (United). Two hundred sixty-three of the 712 members attended and voted 184-77 to request The Presbytery of Baltimore for a transfer to another denomination, the appropriate procedure under United's Constitution. The church leadership did not seek such a transfer, but instead, the Babcock Session and Trustees met secretly on March 14, 1981 and executed deeds conveying all of Babcock's real and personal property to Merritt Boulevard Presbyterian Church of Dundalk, Inc. as "absolute and irrevocable gifts."

Merritt Boulevard Presbyterian Church of Dundalk, Inc. was incorporated in 1980 by Mark Werner, II, Esquire, one of the attorneys for Petitioners, his wife, and another couple. These four were designated the Session (the ruling body), and Mr. Werner was named the resident agent. Though keys to the Babcock church property were turned over to Mr. Werner symbolically on March 15, 1981, the pastor of Babcock retained his own keys and stayed in possession. By letter dated March 15, 1981, the attorney for Merritt notified the Presbytery of its ownership of the Babcock property. The Presbytery reacted to this notice at its Stated Meeting on March 19, 1981 by dissolving the Babcock Session effective immediately, establishing an Administrative Commission to act as the Session of Babcock (under authority of the Book of Order, Sec. 41.15, Petitioners' App. F), removing the pastors of the church, directing that they no longer have access to the pulpit, and that they no longer perform duties associated with the role of pastor. Since under the Book of Order (Sec. 41.08, Petitioners' App. F) the Church Session has "authority over all the affairs and activities of a particular church," the Commission, acting as the Session, took possession of

the church property the next day on March 20 with the acquiescence of Pastor Louthan. However, he and his family were allowed to remain in the manse. The Commission arranged for the worship service on Sunday, March 22, 1981. After the church service, Respondents employed security guards to prevent the unauthorized removal of personal property and other acts of vandalism, and to prevent unauthorized entry.

When the lower court held for Petitioners, Merritt and the dissident members of Babcock, it gave them possession of the property. The dissidents remained in possession until the Court of Special Appeals of Maryland reversed the trial court, declaring that the attempted gifts of the property to Merritt were void (Respondents' App. A). On August 24, 1982, the trial court signed a Decree in the Equity case and an Order in the Law case, the net effect being to direct that Petitioners return possession of the property to the Respondents, that Merritt reconvey the property to Babcock, and that the dissidents cease using the name Babcock Memorial Presbyterian Church (Respondents' Apps. B and C). The dissidents are now conducting services under the name Loch Raven Village Presbyterian Church at another location. Respondent, the Administrative Commission acting as the Session of Babcock, continues in possession of Babcock Memorial Presbyterian Church, holding services and maintaining the other related church activities.

ARGUMENT

I.

THE COURT OF APPEALS OF MARYLAND DID NOT VIOLATE THE FIRST AND FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

This Court held in *Jones v. Wolf*, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775, (1979) as follows:

> The First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. . . . As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. . . . Subject to these limitations, however, the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, "a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith. . . ."
>
> At least in general outline, we think the "neutral principles of law" approach is consistent with the foregoing constitutional principles. The neutral principles approach was approved in Md. & Va. Churches, supra, an appeal from a judgment of the Court of Appeals of Maryland settling a local church property dispute on the basis of the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property. Finding that this analysis entailed "no inquiry into religious doctrine," the Court dismissed the appeal for want of a substantial federal question.

Id., at 443 U.S. 602-603 (citations omitted, emphasis in original).

The Court of Appeals of Maryland has been a leading proponent, if not the original proponent, of the neutral principles doctrine which is based upon examination of the deeds, the local church charter and bylaws, the state statutes, and the constitution of the general church. The Maryland Court established this doctrine in *Md. & Va. Eldership v. Sharpsburg,* 249 Md. 650, 241 A.2d 691 (1968), vac. 393 U.S. 528, 21 L. Ed. 2d 750, 89 S. Ct. 850 (1969), reaff'd. 254 Md. 162, 254 A.2d 162 (1969), *cert. denied,* 396 U.S. 367, 24 L. Ed. 2d 582, 90 S. Ct. 499 (1970). The Maryland Courts have followed this principle consistently in *Polen v. Cox,* 259 Md. 25, 267 A.2d 201 (1970); *Calvary Presbyterian Church v. Presbytery,* 39 Md. App. 405, 386 A.2d 357 (1978) (*cert. denied* Aug. 1978), and in the instant case. The opinion of the Court of Appeals of Maryland speaks for itself. It should be noted that the decision was unanimous and written by The Honorable Marvin H. Smith, the senior member of the Court.

II.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION

The questions presented to the Court of Special Appeals and the Court of Appeals of Maryland by both Petitioners and Respondents are set forth in Respondents' Appendices D and E respectively. The only federal question raised by Petitioners is question No. 6 to the Court of Appeals of Maryland which, when quoted in full, reads: "6. Whether the Court of Special Appeals violated the First and Fourteenth Amendments of the United States Constitution in its application of Section 5-331(a) of the Corporations and Associations Article, Maryland Annotated Code." (See Respondents' App. F for the statutory provisions). The Court of Appeals of Maryland disposed of the only federal question before it in a footnote, stating:

> At the time of Park's incorporation the General Assembly had not enacted legislation relative to Presbyterian churches such as that relative to the United Presbyterian Church in the United States of America now found in Code (1975, 1982 Cum. Supp.) §§ 5-329 to -332, Corporations and Associations Article. We do not consider those sections in reaching our decision here. If we were to do so it would reinforce our conclusions.

Petitioners' App. p. A-5.

The only other references to federal questions made by Petitioners in the three Maryland courts were (1) detailed reviews of this Court's decisions from *Watson v. Jones,* 13 Wall 679, 20 L. Ed. 666 (1872), through *Jones v. Wolf;* and (2) in their motion for reconsideration by the Court of Appeals of Maryland, an allegation that the Court of Appeals had made "extensive, searching inquiry into the polity of United in clear violation of the premier prohibition of the First Amendment. . . ." (Petitioners' App. pp. A-31-32). This allegation is clearly refuted by the opinion of that Court.

III.

THERE IS NO CONFLICT AMONG THE STATES AS TO THE MEANING OF *JONES v. WOLF.*

There is no conflict, as Petitioners allege, among the highest courts of California, South Dakota and Maryland as to the exact meaning of this Court's instructions in *Jones v. Wolf.*

The Supreme Court of South Dakota disposed of that contention by carefully distinguishing its case from the instant case on the facts. (See Petitioners' App. p. A-63).

The California case, *Presbytery of Riverside v. Community Church of Palm Springs,* 89 Cal. App. 3rd. 910, 152 Cal. Rptr. 854 (1979), *cert. denied,* 444 U.S. 974, 100 S. Ct. 469, 62 L. Ed. 2d 389 (1979), is also distinguishable on the facts. In that case, the church was originally a

community church and, although it joined United in 1917 and changed the name to include the word "Presbyterian", that change did not last long. The California Court of Appeal pointed out that the church held itself out to members and prospective members as a community church and, indeed, a large number of its members did not even know that it was affiliated with United. Funds for the church were raised in the neighborhood on an ecumenical basis.

In the instant case, Babcock had always been a church in the denomination, having been originally started as a mission of another church within the Presbytery. Babcock actively participated in the Presbytery and, as the Court of Appeals of Maryland pointed out, as late as 1968 adopted bylaws which affirmed its affiliation with United and stated that it "is under the care of and subject to the jurisdiction of The Presbytery of Baltimore." (Petitioners' App. p. A-46). In their brief to the Court of Appeals of Maryland, Petitioners admitted Babcock was bound by United's Constitution at the time the deposed Session made the alleged gifts.

No state court has yet made the error of interpreting *Jones v. Wolf* as standing for the proposition that the only constitutionally permissible method of analysis is the neutral principles approach. *Jones v. Wolf* in fact stands for the proposition that state courts *may* utilize the neutral principles approach or *any other method* of resolving church property disputes which does not violate the precept that no court may delve into ecclesiastical matters. This has been recognized by various state courts in decisions citing *Jones v. Wolf*. *Galich v. Catholic Bishop of Chicago*, 75 Ill. App. 3d 538, 394 N.E.2d 572 (1979), *cert. denied*, 445 U.S. 916, 63 L. Ed. 2d 600, 100 S. Ct. 1277 (1980); *Marich v. Kragulac*, 415 N.E.2d 91 (Ind. App. 1981); *Fluker Community Church v. Hutchens*, 419 So. 2d 445 (La. 1982); *Graffam v. Wray*, 437 A.2d 627 (Me. 1981);

Bennison v. Sharp, 121 Mich. App. 705, 329 N.W.2d 466 (1982); *Protestant Episcopal Church v. Graves,* 83 N.J. 572, 417 A.2d 19 (1980), *cert. denied,* 449 U.S. 1131, 101 S. Ct. 954, 67 L. Ed. 2d 119 (1981). Thus, *Jones v. Wolf* recognizes that resolution of church property disputes is a matter of state law provided that there is no impermissible inquiry into ecclesiastical matters. It follows that various state laws may lead to differing decisions.

In any event, even if it can be argued that there are conflicts between state courts, it is submitted that the time is not yet ripe for this Court to rearticulate the guidelines set forth in *Jones v. Wolf.*

IV.

THIS CASE IS NOT OF SUFFICIENT NATIONAL IMPORTANCE TO WARRANT REVIEW BY THIS COURT.

Review of this case is not warranted for the following reasons:

1. The present case is unique in that it is the only litigation known to Respondents in which a group of dissidents have attempted to deny possession, control and use of church property to the duly constituted church authorities by making "gifts" of all of the church's property to another church. It is submitted that the dissidents of the Babcock Church realized that under the holding of *Polen v. Cox,* 259 Md. 25, and *Calvary,* 39 Md. App. 405, they could not terminate their relationship unilaterally with the denomination and take the property with them; else they would not have gone through the charade of making the gifts to Merritt, a holding corporation masquerading as a church.

2. The question of whether the original Babcock Session and Trustees could make a valid gift of all of the church property to Merritt has been abandoned by Petitioners.

The first of the two actions in the Circuit Court for Baltimore County was Merritt's suit in ejectment and trespass to gain possession of the church's real and personal property from Respondents. The second suit was filed by Respondents in equity seeking, among other things, a decree requiring Merritt to reconvey the church property to Babcock. The trial court held that "'Babcock', through its Board of Trustees and Session, possessed the legal ability to convey the real and personal property of 'Babcock' to 'Merritt' by irrevocable gift, vesting *legal* title in such property in 'Merritt'" (Petitioners' App. p. A-54, emphasis in original). It, therefore, held for Merritt in its action and against Respondents in their action. On Appeal, the Court of Special Appeals of Maryland reversed, holding that the gifts to Merritt were voidable and declaring them void. The Court of Appeals of Maryland affirmed. Petitioners now say that they do not wish to argue with the Court of Appeals' conclusion that the gifts were void (Petition, p. 27).

3. Petitioners attempt to pursuade this Court that the issue before the three Maryland Courts was whether the dissidents (in this case less than a third of the church membership) could unilaterally sever their relationship with the denomination and retain control and ownership of the church property. This was not an issue before the trial court in either of the two cases and, therefore, was not considered by either the Court of Special Appeals or the Court of Appeals of Maryland. The only time this issue was squarely presented to a Maryland Court was in Petitioners' Motion for Reconsideration in the Court of Appeals of Maryland.

In any event, the question of use and control of property of the United Presbyterian Church in the United States of America does not have the national significance that it might have had in the past because the General Assembly (the highest judicatory of United) at its annual meeting in

June, 1981, amended its Constitution (The Book of Order) by stating in Section 72.02:

> All property held by or for a particular church, a presbytery, a synod, the General Assembly, or The United Presbyterian Church in the United States of America, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of the particular church or of a more inclusive judicatory or retained for the production of income, is held in trust nevertheless for the use and benefit of The United Presbyterian Church in the United States of America.

See App. G for the current Book of Order sections relating to property.

CONCLUSION

It is respectfully urged that this Court, for the reasons set forth above, deny the Petition for Writ of Certiorari, or grant the Writ and affirm the decision of the Court of Appeals of Maryland on the record before it.

Respectfully submitted,

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APPENDIX

APPENDIX A

Opinion Of Court of Special Appeals of Maryland

September Term, 1981

The Presbytery of Baltimore of the United Presbyterian Church in the United States of America,

v.

Babcock Memorial Presbyterian Church, et al.

(No. 1576, September Term 1981)

The Presbytery of Baltimore of the United Presbyterian Church in the United States of America, et al.

v.

Merritt Boulevard Presbyterian Church of Dundalk, Inc.

(No. 1577, September Term 1981)

Reported: 52 Md. App. 428; 449 A.2d 1190, (1982)

THOMPSON, J., delivered the opinion of the Court.

This is a consolidated action emanating from a conveyance by the Session and Board of Trustees of the Babcock Memorial Presbyterian Church (Babcock) of all of its real and personal property as "absolute and irrevocable gifts" to Merritt Boulevard Presbyterian Church of

Dundalk, Inc. (Merritt). At the time of the conveyance, Babcock was a member of the Presbytery of Baltimore of the United Presbyterian Church in the United States of America (Presbytery) and the United Presbyterian Church in the United States of America (United). The trial court held that at the date of the conveyance Babcock was legally entitled to make "absolute and irrevocable" gifts of its real and personal property to Merritt, that Presbytery has no contractural or proprietary interest in the property, and that the departing members could continue to use the name and control the corporate organization.

Appellants present the following questions:

> 1. Did the lower court err in holding that United, while being a hierarchical church in ecclesiastical matters, has a congregational polity with respect to church property?
>
> 2. Is Babcock bound by United's Constitution?
>
> 3. Did the lower court err in holding that Babcock's original Session and Board of Trustees, by conveying all of Babcock's real and personal property to Merritt as absolute and irrevocable gifts, defeated appellant's right to have the use, possession and control of that property?

United is organized and operated under a constitution which consists of two parts: "The Book of Confession" and "The Book of Order." The Book of Order contains three parts, namely: the "Directory of Worship," the "Form of Government," and the "Book of Church Discipline." That part of the constitution at issue is the "Form of Government." United is an association of local United Presbyterian churches organized into a hierarchical structure consisting of four distinct bodies known as judicatories (tribunals of ecclesiastical authority). These tribunals in ascending order of authority, according to the powers given or reserved to them by The Book of Order, are: (1) the Session, which has authority over all the affairs and activities of the particular church, (2) the Presbytery, composed of all of the United Presbyterian Churches in a

geographic area, (3) the Synod, generally composed of the Presbyteries in a given state or region, and (4) the General Assembly, the highest governing body within United.

The Presbytery of Baltimore is a non-profit, unincorporated association, its principal office being in the City of Baltimore. Its jurisdiction entails the supervision and care of those United Presbyterian Churches located in the City of Baltimore, central and western Maryland.

Babcock, originally named The Park Presbyterian Church of Baltimore City, was incorporated under the laws of Maryland in 1891. Article VI of the original charter provides:

> "The Park Presbyterian Church of Baltimore City shall forever remain a Presbyterian Church in accordance with the Standards of the Presbyterian Church of the United States."[1]

Two years later it was enrolled as a member of the Presbytery and has remained a member of and under the care of the Presbytery through March 23, 1981, when its status came into dispute. In 1949 Babcock moved from its original location at North and Madison Avenues in Baltimore City to its present location on Loch Raven Boulevard with the aid of Presbytery and consent of Babcock's congregation. The majority of funds used to acquire Babcock's property, real and personal, was secured as the result of the efforts and donations of the local congregation.[2]

Certain disputes, ecclesiastical in nature, arose between Babcock and the higher judicatories of United, and at an August 5, 1980 meeting, the Session voted to recommend

[1] On May 28, 1958 the Presbyterian Church in the United States of America and the United Presbyterian Church of North America merged to form the church now known as the United Presbyterian Church in the United States of America (United).

[2] The only funds emanating from a source other than the local congregation was a loan of $5,000 in 1951 by the Board of National Missions, secured by a mortgage on the property, which was released, having been fully paid, in 1966.

to the congregation that appropriate actions be taken to sever Babcock's relationship with Presbytery and United. On September 18, 1980, the Presbytery, at its regular monthly meeting, established an Administrative Commission to investigate the alleged disorders at Babcock and to recommend to the Presbytery whether Babcock's Session should be dissolved and replaced with the Administrative Commission as provided in The Book of Order.[3] Meetings were held between the Commission and leadership and congregation of Babcock without resolution of the problem. The Session, on March 14, 1981, made an "absolute and irrevocable gift" of the subject property to Merritt.[4] On March 16, 1981, after the deed of the real property had been recorded in the Land Records of Baltimore County, a letter advising of the gift transfers was hand delivered to Presbytery. On March 23, 1981, at a meeting called by the Session and Board of Trustees of Babcock, the membership voted by a majority of those present (228-6) to withdraw from United and its constituent judicatories. The membership further ratified and adopted as their action, the acts of the Session and the Board of Trustees in conveying the property as gifts to Merritt.

In late March 1981, the Administrative Commission assumed possession of the Babcock property and required Babcock congregants to leave the premises. On several

[3] Section 41.15 of The Book of Order provides:

"15. Whenever, after a thorough investigation, and after full opportunity to be heard has been accorded to the session in question, the presbytery of jurisdiction shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint a commission composed of ministers and ruling elders, with the full power of a session. This commission shall take the place of the existing session, if any, which shall cease to act until such time as the presbytery shall otherwise direct."

[4] Merritt Boulevard Presbyterian Church of Dundalk, Inc., was incorporated on April 15, 1980 as an unaffiliated Presbyterian Church. It has fourteen members and its principal place of worship is in Dundalk, Maryland.

occasions thereafter, members of Merritt attempted to gain access to the church for purposes of a congregational meeting, but were denied by the appellants. Merritt thereafter filed suit in ejectment and trespass to regain possession of the property and the Presbytery and members of the Commission brought suit to have the deeds to Merritt set aside.

Appellants assert that the trial court erred when it held that United maintained "a congregational polity with respect to the use and ownership of local church property" and that the appellee, Merritt, was entitled to possession of the church property it had received by gift from Babcock. We agree.

In general, there are two distinct forms of church organization, congregational and hierarchical. Further, within the hierarchical polity lie two subdivisions, namely, episcopal and presbyterial (sometimes called connectional). A general summary of these forms of government is found in footnote 6 of Adams and Hanlon, *Jones v. Wolf: Church Autonomy and The Religion Clauses of the First Amendment*, 128 U. Pa. L. Rev. 1291, 1292 (1980) which provides:

> "A hierarchical organization has been defined by the Supreme Court as a general organization of churches 'having similar faith and doctrine with a common ruling convocation or ecclesiastical head.' Kedroff v. Saint Nicholas Cathedral, 344 U.S. 94, 110 (1952). At least two distinct types of hierarchical polity may be discerned, however. Under the episcopal form of polity, all authority reposes in certain ecclesiastical officers. In a presbyterial arrangement, authority is delegated instead to an ascending succession of judicatories composed of laymen as well as ministers. Unlike episcopal polities, presbyterial churches are representative, inasmuch as both ruling 'elders' and ministers constituting the governing bodies are elected by the congregation. Among the principal denominations with an episcopal form of polity are the Protestant Episcopal Church, the Methodist Church, the

> Roman Catholic Church, and the Eastern Orthodox Churches. Those churches classified as having a presbyterial form of polity include the United Presbyterian Church of North America, the Presbyterian Church in the United States, and the Assemblies of God.
>
> "In contrast to the hierarchical form of organization, the central characteristic of a congregational polity is the autonomy of each local entity. While congregational churches sometimes affiliate with other religious organizations, they generally recognize no superior authority over the local congregation. Subject to the rules prescribed for its own self-government, a congregational church is free to affiliate and withdraw from other church organizations at will. Examples of a congregational polity are provided by the numerous Baptist bodies, the Jewish congregations, the Church of Christ, and the Quakers."

The relationship of the hierarchical format of the Presbyterian form of government to ownership of church property was discussed in Annot., 52 A.L.R.3d (1973) where it was stated at 417:

> "Although the Presbyterian form of church government is without question hierarchical, there has been a considerable amount of litigation over the right of local presbyterian churches to withdraw from the general church and retain the use and control of local church property. . . . [T]his right is uniformly denied, on the ground that the local Presbyterian Church stands in a hierarchical relationship to the general church, with respect to property matters as in other areas." (footnote omitted).

United's hierarchical structure is set out in The Book of Order. The tribunals are organized in ascending order into (1) the church Session, composed of the elders of local church, (2) the Presbytery, composed of several churches in a geographical area, (3) the Synod, generally composed of all presbyteries within a state, and (4) the General

Assembly, the highest governing body. *See, Jones v. Wolf*, 443 U.S. 595, 621, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979).

In Chapter XI of Section 41.08 of "Form of Government" it is provided, in pertinent part:

> "8. The church session shall have authority over all of the affairs and activities of the particular church, except such matters as may, by this Form of Government, be specifically accorded to . . . a higher judicatory. The session may from time to time delegate administrative responsibilities in respect to the care and management of church properties and in respect to the financial affairs of the church either to the board of trustees or to the board of deacons or in part to one and in part to the other, subject always to the superior authority and direction of the session."

Thus, the Session is the overseerer of the church property subject to a higher judicatory if The Book of Order extends that authority to the higher judicatory. *Calvary Pres. Church v. Presbytery*, 39 Md. App. 405, 386 A.2d 357, *cert. denied*, 283 Md. 731 (1978). That the Presbytery is given this superior authority with respect to church property is shown by the following provisions of The Book of Order:

> "62.11 11. Whenever hereafter a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have, both real and personal, shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of The United Presbyterian Church in the United States of America.
>
> "62.12 12. A particular church shall not sell, mortgage or otherwise encumber any of its real property and it shall not acquire real property

> subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church.
>
> "A particular church shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session of the particular church."

These provisions establish that while many matters, including the management of church property are initially committed to the Session and congregation of the local church, the actions on this local level remain subject to review by the Presbytery. *Jones v. Wolf, supra,* 443 U.S. at 621.

In *Calvary Pres. Church v. Presbytery, supra,* Calvary voted to disassociate itself from United but sought to retain, possess and control its property. The Presbytery thereafter, pursuant to § 41.15 of The Book of Order replaced the existing Session of Calvary with an Administrative Commission. The Administrative Commission then attempted to assume control over Calvary's property. When the former Session denied them use and control of the property, the Administrative Commission and Presbytery instituted suit. The trial court found that control of the Calvary Church property belonged to United, (the national organization), and not the local Session. This court affirmed, taking into consideration the legislative provisions set forth in Md. Corp. and Ass'ns. Code Ann., § 5-331 (a) (Cum. Supp. 1977) which provides:

> "*Certain charters deemed amended.* — To the extent not prohibited by the Constitution of the United States or of this State, the charter of each religious corporation subject to this part and incorporated before June 1, 1957, is deemed to be amended to conform to the constitution of the United Presbyterian Church in the United States of America and its successors, as from time to time in effect."

We concluded:

> "We think it apparent that Calvary holds title to its physical property for the benefit of United. 'The Form of Government' manifests that all church property is owned by United. When Calvary became associated with United's predecessor, which association continued with United, it did so with the clear understanding that the Calvary church buildings became and continue to be the property of United. Moreover, lest there be any lingering doubt, the legislature has eradicated it by virtue of Md. Corp. & Ass'ns. Code Ann. § 5-331 (a) (Cum. Supp. 1977)." *Id.* at 420.

In the present case, the trial court attempted to distinguish the *Calvary* precedent by emphasizing the absence of express language in Babcock's charter binding it to United's constitution. The court stated:

> "The Calvary charter expressly pledges allegiance to 'United's' Form of Government and its 'connection' to the Presbytery in Baltimore. The 'Babcock' charter lacks the plain and unequivocal language found in the Calvary charter. Further, in order to ascertain whether or not 'Babcock' had remained a Presbyterian church in accordance with 'the *standards* of the Presbyterian Church in the United States', this court would be required to conduct an impermissible inquiry into matters of faith or ecclesiastical rule, custom or law."[5]

We think the trial court erred in finding that Babcock's charter, which promised allegiance to the "standards" of the Presbyterian Church, did not encompass a promise to conform to the government of the Presbyterian Church. Despite the absence of an express promise to adhere to the

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[5] Article VI of the Calvary charter of 1911 provides:

> "ARTICLE VI. The 'Calvary Presbyterian Church of Baltimore City' shall forever remain a Presbyterian Church in doctrine, government, and worship in accordance with the standards of the Presbyterian Church in the United States of American (sic) . . ."

governmental tenets of the national church in the charter, other provisions in the By-Laws reveal an intent to be bound by United's constitution. For example, the article entitled "Organization" in the By-Laws adopted in 1968 sets forth in Section 2:

"*Section 2 — Affiliation*

> "This church is affiliated with the United Presbyterian Church in the United States of America and is under the care of and subject to the jurisdiction of the Presbytery of Baltimore. These By-Laws shall be subordinate to the Constitution of the United Presbyterian Church and nothing contained herein shall be interpreted to the contrary."

Further, as emphasized in *Calvary*, the Maryland Legislature has eradicated any doubt as to Babcock's subordination to the national church's constitution as revealed in § 5-331 of the Md. Corp. & Ass'ns. Article.

The appellees additionally attempt to distinguish *Calvary* by asserting that at the time of its "gift" to Merritt, Babcock had not been "dissolved," as in *Calvary*, and thus retained full power to convey its property. This argument fails because it is premised on the unsupported assumption that Babcock had the authority to divest itself of its property in the absence of dissolution. As previously indicated, while the local Sessions do possess various rights and powers with respect to its property, this power is a limited one, subject to the authority of the higher judicatories. The local church voluntarily subjected itself to the jurisdiction of the national body, it cannot avoid its commitment by rushing to be the first to act with reference to its property. The presence or absence of dissolution is not determinative of this issue.

Finally, the trial court erred in finding that Babcock was permitted to make a complete gift of its property under Section 62.12 because such gift did not entail a sale, mortgage or encumbrance of its real property as prohibited in Section 62.12. We do not think it was necessary to include terminology referring to every possible dis-

position of property in order for the intended effect of the section to be evident. The phrase "or otherwise encumber" is sufficiently broad to encompass a prohibition as to a gift of the real property.

We hold that the attempted gifts of property are voidable and they are hereby declared void.

Judgment and decree reversed. Case remanded for entry of a judgment and decree in accordance with this opinion. Appellees to pay the costs.

APPENDIX B

Decree Of The Circuit Court For Baltimore County, In Equity, On Remand From The Court Of Special Appeals Of Maryland

(Case No. 108725)

The Order of this Court dated November 25, 1981 having been appealed to the Maryland Court of Special Appeals, which by mandate dated August 18th, 1982 Ordered and Adjudged that the judgment of the Circuit Court for Baltimore County be reversed and the case remanded to that Court to enter a Decree in accordance with the opinion of the Court of Special Appeals, it is, this 24th day of August, 1982,

ORDERED:

1. That the Order of this Court dated November 25, 1981 be and the same is hereby vacated.

2. That the Motion for Summary Judgment filed by the plaintiffs is hereby *granted*.

3. That the Motion for Summary Judgment filed by Defendants, The Merritt Boulevard Presbyterian Church of Dundalk, Inc., et. al. is hereby *denied*.

4. That the Motion for Summary Judgment filed by the Defendant and Counter-Plaintiff, Babcock Memorial Presbyterian Church, is hereby *denied*.

5. That the Plaintiffs, The Presbytery of Baltimore, et. al. be placed in immediate possession of the property, both real and personal, located and known as 8240 Loch Raven Boulevard, Towson, Baltimore County, Maryland, and any other personal property which belongs to the Babcock Memorial Presbyterian Church and has been removed by Defendants or any of them from the said property.

6. That Defendants are directed to restore the real property to the same condition it was in at the time Plaintiffs took possession pursuant to the Order of this Court subject to ordinary wear and tear.

7. That the Defendant, Merritt Boulevard Presbyterian Church of Dundalk, Inc. and the members of its Session, immediately convey good title to the real property known as 8240 Loch Raven Boulevard, Towson, Baltimore County, Maryland, by deed properly executed and acknowledged unto Babcock Memorial Presbyterian Church, a body corporate.

8. That the Defendant, Merritt Boulevard Presbyterian Church of Dundalk, Inc. immediately convey good title to all the personal property located in or on the premises known as 8240 Loch Raven Boulevard, Towson, Baltimore County, Maryland, including any such personal property removed from said premises on or after March 23, 1981.

9. That the Defendants and each of them surrender immediate possession of all keys to all of the buildings or parts thereof or rooms therein located on the premises at 8240 Loch Raven Boulevard, Towson, Baltimore County, Maryland, including the manse, unto any representative of the Plaintiff, The Presbytery of Baltimore, or unto Richard W. Kiefer, attorney for Plaintiffs.

10. That the Defendants, the members of the former Session, are directed to deliver all of the records of the Session to a representative of the Plaintiffs or to Richard W. Kiefer, attorney for Plaintiffs.

11. That the Defendants, members of the Board of Trustees of Babcock Memorial Presbyterian Church, are directed to deliver all of the records and assets of the corporation, including but not limited to, Articles of Incorporation and any Amendments thereof, Bylaws, Minute Books, other corporate records, bank books, cash, securities and other intangible as well as tangible personal property to a representative of the Plaintiffs or unto Richard W. Kiefer, attorney for Plaintiffs.

12. That the Defendants, Babcock Memorial Presbyterian Church, members of the former Session, Trustees, and Merritt Boulevard Presbyterian Church of Dundalk, Inc. are directed to account to the Plaintiffs for all monies and other property, real and personal, in which Babcock

Memorial Presbyterian Church has, has had or may have any interest, claim or demand, including funds dispersed by them prior to March 23, 1981 for services, supplies and other purposes to be delivered and/or rendered after March 23, 1981.

13. That the Defendants are hereby enjoined from interfering with the Plaintiffs, The Presbytery of Baltimore and the Administrative Commission, with full powers of the Session of Babcock Memorial Presbyterian Church, in the exercise of their authority over the affairs of that church in accordance with the Book of Order and specifically including their authority over the worship of the congregation of Babcock Memorial Presbyterian Church and their exclusive authority over the uses of the buildings and properties of Babcock Memorial Presbyterian Church.

14. That the Defendant shall pay all bills, including gas and electric, telephone, water and supplies which were generated by them during their occupancy of the said property and shall hold Plaintiffs harmless from any action, suit or liability for any such bills.

15. That the Defendants and each of them individually and/or collectively be and they are enjoined immediately from using the name of Babcock Memorial Presbyterian Church or any similar name or combination thereof to describe a church other than a church of the United Presbyterian Church in the United States of America.

16. That the Defendants and each of them are hereby permanently enjoined from interfering with the possession and use of the aforesaid corporate records, documents, items of personal property and the proceeds of the T. Rowe Price Prime Reserve Fund, from interfering with, diverting, or otherwise impeding any mails addressed to Babcock Memorial Presbyterian Church, any of its organizations or officers, or from interfering with the use of the name "Babcock Memorial Presbyterian Church" by the aforesaid Plaintiff.

17. That the acts enjoined shall apply to the Defendants herein named, their agents, servants, and/or employees, and the Defendants' successors, Personal Representatives and assigns, as their interest may accrue or appear.

18. That the Defendants pay the cost of these proceedings.

19. The Defendant will be permitted to hold two wedding services on September 11, 1982 and one wedding service on September 18, 1982 in the sanctuary of the church with Reverend Robert Louthan conducting the services.

WILLIAM R. BUCHANAN, SR.,
Judge.

APPENDIX C

Order Of The Circuit Court For Baltimore County, At Law, On Remand From The Court Of Special Appeals Of Maryland

(Case No. 106725)

The Order of this Court dated November 25, 1981, having been appealed to the Maryland Court of Special Appeals, which by mandate dated August 18th, 1982 Ordered and Adjudged that the judgment of the Circuit Court for Baltimore County be reversed and the case remanded to that court to enter a Decree in accordance with the Opinion of the Court of Special Appeals, it is, this 24th day of August, 1982,

ORDERED:

1. That the Order of this Court dated November 25, 1981 be and the same is hereby vacated.

2. That the Motion for Summary Judgment filed by the Defendant, The Presbytery of Baltimore of the United Presbyterian Church in the United States of America, an unincorporated association, et. al., is hereby *granted*.

3. That the Motion for Summary Judgment filed by the Plaintiff is hereby *denied*.

4. That the Defendants, The Presbytery of Baltimore of the United Presbyterian Church in the United States of America, et. al., be placed in immediate possession of the property, both real and personal, located at and known as 8240 Loch Raven Boulevard, Towson, Baltimore County, Maryland.

5. That the Plaintiffs, and each of them, immediately deliver any personal property located in or on the premises known as 8240 Loch Raven Boulevard, Towson, Baltimore County, Maryland on March 23, 1981, and subsequently removed from said premises by or on behalf of the Plaintiffs, unto any representatives of the Defendants, The Presbytery of Baltimore of the United Presbyterian

Church in the United States of America, et. al., or unto Richard W. Kiefer, attorney for Defendants.

6. That the Plaintiffs surrender immediate possession of all keys to all of the buildings or parts thereof or rooms therein located on the premises at 8240 Loch Raven Boulevard, Towson, Baltimore County, Maryland, including the manse, unto any representative of The Presbytery of Baltimore of the United Presbyterian Church in the United States of America, et. al., or unto Richard W. Kiefer, attorney for Defendants.

7. That the Plaintiff is hereby permanently enjoined from interfering with the possession of said real and personal property by the Defendants as aforesaid.

8. That the acts enjoined shall apply to the Plaintiff herein named, its agents, servants, and/or employees, and the Plaintiff's successors and assigns, as their interest may accrue or appear.

9. That the Plaintiff, Merritt Boulevard Presbyterian Church of Dundalk, Inc. pay the costs of these proceedings.

WM. R. BUCHANAN, SR.,
Judge.

APPENDIX D

Questions Presented To Court Of Special Appeals Of Maryland

A. Questions presented in brief of Appellants (Respondents)

1. Did the lower court err in holding that United, while being a hierarchical church in ecclesiastical matters, has a congregational polity with respect to church property?

2. Is Babcock bound by United's Constitution?

3. Did the lower court err in holding that Babcock's original Session and Board of Trustees, by conveying all of Babcock's real and personal property to Merritt as absolute and irrevocable gifts, defeated Appellants' right to have the use, possession and control of that property?

B. Questions presented in brief of Appellees (Petitioners)

1. Whether by using neutral principles of law the lower Court correctly determined that there was no language in a legally cognizable form in any of the pertinent documents upon which to declare a trust or contractual or proprietary interest in the property, real and personal, titled in the name of the local church in favor of United.

2. Appellees adopt the Questions presented in Appellants' Brief.

APPENDIX E

Questions Presented To Court Of Appeals Of Maryland

A. Questions presented in brief of Appellants (Petitioners)

1. Whether the Court of Special Appeals failed to employ the neutral principles of law doctrine as enunciated by the Court of Appeals in *Maryland and Virginia Eldership v. The Church of God at Sharpsburg*, 254 Md. 162, 254 A.2d 162 (1969).

2. Whether the Court of Special Appeals, in awarding the property of the local church of the denomination followed the theory of implied trust which has been declared by the Court of Appeals in *Maryland and Virginia Eldership v. The Church of God at Sharpsburg*, 254 Md. 162, 254 A.2d 162 (1969) as not being the law of this state.

3. Whether the Court of Special Appeals erred in awarding the subject property of this litigation to the Presbytery in the absence of a specific finding that the deeds, local church charter, or constitution of the United Presbyterian Church contained language in a "legally cognizable form" expressing a trust or causing a reverter or forfeiture of the property of the local church to United in the event of a schism or withdrawal by the local church.

4. Whether there is a presumption in Maryland that a local church owns and controls its own property, is permitted to withdraw from its parent denomination unilaterally and is permitted to retain the property titled in the local church's name upon such a withdrawal, when the constitution of the denomination is silent on the issues of withdrawal by the local church from the national organization, forfeiture or loss of property by the local church in the event of withdrawal, and the imposition of an express trust upon local church property in favor of the denomination.

5. Whether the Court of Special Appeals erred in overruling the finding of the trial court that the United Presbyterian Church, while an hierarchical church in ecclesiastical matters, is congregational with respect to the ownership of local church property.

6. Whether the Court of Special Appeals violated the First and Fourteenth Amendments of the United States Constitution in its application of Section 5-331(a) of the Corporations and Associations Article, Maryland Annotated Code.

7. Whether the Court of Special Appeals failed to comply with Maryland Rule 1086 in reviewing the findings of fact of the trial court.

B. Questions presented in brief of Appellees (Respondents)

1. Was the Court of Special Appeals correct in holding that the attempted gifts of all Babcock's real and personal property are void?

2. Was the Court of Special Appeals correct in holding that the Administrative Commission established by the Presbytery is entitled to possession, use and control of the Babcock property?

3. Did the Court of Special Appeals comply with Maryland Rule 1086 in reaching its decision?

APPENDIX F

Annotated Code of Maryland

Corporations and Associations Article

Sections 5-329 to 5-332

PART IV. UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA

Sec. 5-329. Scope of part.

(a) In general. — Except as provided in subsection (b) of this section, this part applies to every religious corporation formed in this State by a Presbyterian Church that is subject to the jurisdiction of the United Presbyterian Church in the United States of America.

(b) Exception. — This part does not apply to any Presbyterian Church incorporated by special act of the General Assembly. (1976, ch. 487, Sec. 5)

Sec. 5-330. Incorporation.

A religious corporation subject to this part may be incorporated only in conformity with the constitution of the United Presbyterian Church in the United States of America and its successors. (1976, ch. 487, Sec. 5.)

Sec. 5-331. Charters.

(a) Certain charters deemed amended. — To the extent not prohibited by the Constitution of the United States or of this State, the charter of each religious corporation subject to this part and incorporated before June 1, 1957, is deemed to be amended to conform to the constitution of the United Presbyterian Church in the United States of America and its successors, as from time to time in effect.

(b) Certain amendments prohibited. — The charter of a religious corporation subject to this part may not be amended in any way that conflicts with the constitution of the United Presbyterian Church in the United States of

America and its successors, as from time to time in effect. (1976, ch. 487, Sec. 5.)

Sec. 5-332. Trustees.

(a) Election. — The trustees of a religious corporation subject to this part shall be elected by the congregation of the religious corporation in accordance with its charter.

(b) Vacancy. — If a vacancy exists in the office of trustee and the charter of the religious corporation does not provide for filling the vacancy, the congregation of the religious corporation may fill the vacancy. (1976, ch. 487, Sec. 5.)

APPENDIX G

Selected Sections Of The Book Of Order Of The United Presbyterian Church In The United States Of America

42.08 (1981-82 Edition)

42.08 8. The presbytery has power to receive and decide appeals, complaints, and references brought before it in an orderly manner, and in cases in which the session cannot exercise its authority, shall have power to assume original jurisdiction, provided that cases may be transmitted to judicial commissions as provided in the Book of Church Discipline; to receive under its care candidates for the ministry and to dismiss them to other presbyteries; to examine and license candidates for the ministry; to receive and dismiss licentiates; to receive, dismiss, ordain, install, remove, and judge ministers; to appoint, commission, and supervise lay workers, as provided for in the Constitution; to elect deacons, unordained active members, and other persons to program committees, as distinct from ecclesiastical and judicial committees, with the provision that the chairperson of a particular program committee shall be a minister, a ruling elder, a deacon, or an unordained active member of a church of the presbytery, and the majority of each particular committee shall be composed of ministers and ruling elders of the presbytery; to review and approve the records of church sessions, and to require their correction; to redress whatever they may have done contrary to order, and to take effectual care that they observe the Constitution of the Church; to establish the pastoral relation, and to dissolve it at the request of one or both of the parties, or at its own discretion; to require ministers to devote themselves diligently to their sacred calling and to discipline the delinquent; to see that the lawful injunctions of the higher judicatories are obeyed; to resolve questions of doctrine or discipline seriously and reasonably propounded; to condemn erroneous opinions which injure the purity or peace of the Church; to visit churches for the purpose of inquiring into and correcting

the evils that may have arisen in them; to unite or divide churches in consultation with the members thereof; to form and receive new churches; to take special oversight of churches without pastors; to dissolve churches; to concert measures for the enlargement of the Church within its bounds; in general, to order whatever pertains to the spiritual welfare of the churches under its care; to elect commissioners to the General Assembly and to the synod; and, finally, to propose to the synod or to the General Assembly such measures as may be of benefit to the Church-at-large.

The presbytery shall guide and oversee the particular churches in their training of ruling elders to be ordained or installed.

When the presbytery deems it necessary to meet the needs for the administration of the Sacrament of the Lord's Supper that cannot otherwise be met, it may, for periods not exceeding one year at a time, authorize specific ruling elders or commissioned lay preachers, in specific situations with proper instruction by the presbytery in doctrine and administration of the Lord's Supper, to administer or preside at the Lord's Supper.

The presbytery shall assist and guide particular churches in their ministries and shall itself be a basic unit of mission with responsibilities for particular ministries.

The presbytery shall develop mission strategy and programming within its bounds in the light of the comprehensive strategy of the synod.

72.00-05 (1982-83 Edition)

72.00 — This chapter is declaratory of principles to which The United Presbyterian Church in the United States of America and its antecedent church bodies have adhered from the inception of the presbyterian form of church government.

72.01 — 1. The provisions of Form of Government, Chapter V, Section 1, and other provisions of this

Constitution prescribing the manner in which decisions are made, reviewed, and corrected within this Church are applicable to all matters pertaining to property.

72.02 — 2. All property held by or for a particular church, a presbytery, a synod, the General Assembly, or The United Presbyterian Church in the United States of America, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of the particular church or of a more inclusive judicatory or retained for the production of income, is held in trust nevertheless for the use and benefit of The United Presbyterian Church in the United States of America.

72.03 — 3. Whenever property of, or held for, a particular church of The United Presbyterian Church in the United States of America ceases to be used by that church as a particular church of The United Presbyterian Church in the United States of America in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery.

72.04 — 4. Whenever a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of The United Presbyterian Church in the United States of America.

72.05 — 5. A particular church shall not sell, mortgage, or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church.

A particular church shall not lease its real property used for purposes of worship, or lease for more than five

years any of its other real property, without the written permission of the presbytery transmitted through the session of the particular church.